



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0188]

RIN 1625-AA00

Safety Zone; Mississippi River Mile 95.5 - Mile 96.5; New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi River from mile 95.5 to mile 96.5. This safety zone is necessary to protect persons and vessels from potential safety hazards associated with a fireworks display in the Lower Mississippi River at mile 96. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port New Orleans or a designated representative.

DATES: This rule is effective from 9:45 p.m. to 10:25 p.m on June 26, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0188] to view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Commander (LCDR) Brandon Sullivan, Sector New Orleans, U.S. Coast Guard; telephone (504)365-2280, e-mail [Brandon.J.Sullivan@uscg.mil](mailto:Brandon.J.Sullivan@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to

authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive event information from the event sponsor until there was insufficient time remaining to undertake an NPRM. This safety zone is needed to protect vessels and mariners from the safety hazards associated with an aerial fireworks display taking place over the waterway. Providing notice and comment for this rule establishing the necessary safety zone would be impracticable as it would delay the safety measure necessary to protect life and property from the possible hazards associated with the display. Delay would also unnecessarily interfere with the planned fireworks display. The impacts on navigation are expected to be minimal as the safety zone will only impact navigation for a short duration.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Waiting a full 30 days after publication in the Federal Register is impracticable and contrary to the public interest as that would delay the effectiveness of the safety zone until after the planned fireworks event. Immediate action is needed to protect vessels and mariners from the safety hazards associated with an aerial fireworks display that will last for only a short duration. The Coast Guard will notify the public and maritime community that the safety zone will be in effect and of its enforcement periods via broadcast notices to mariners.

B. Basis and Purpose

The Oracle C/O J&M Displays is sponsoring a fireworks display from a barge located at mile 96 on the Lower Mississippi River. This event will take place from 9:45 p.m. to 10:25 p.m on June 26, 2013. The Coast Guard has determined that a safety zone is needed to protect the public, mariners, and vessels from the hazards associated with these aerial fireworks displays over the waterway.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and

160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

#### C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone on the Lower Mississippi River from 9:45 p.m. to 10:25 p.m. on June 26, 2013. The safety zone area will include the entire width of the Lower Mississippi River in New Orleans, LA, from mile 95.5 to mile 96.5. Entry into this zone is prohibited unless permission has been granted by the Captain of the Port New Orleans, or a designated representative.

Notice to the public of this safety zone will be provided via Broadcast Notice to Mariners. Mariners and other members of the public may also contact Coast Guard Sector New Orleans to inquire about the status of the safety zone, at (504) 365-2200.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This safety zone will restrict navigation on the Lower Mississippi River from mile 95.5 to mile 96.5, for approximately 40 minutes on June 26, 2013. Due to the short duration of the event, it does not impose a significant regulatory impact.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following

entities, some of which may be small entities: the owners or operators of vessels intending to transit between miles 95.5 to mile 96.5, between 9:45 p.m. and 10:25 p.m. on June 26, 2013. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons because the safety zone will only be subject to enforcement for approximately 40 minutes on June 26, 2013. Before the activation of the zone, the Coast Guard will issue maritime advisories widely available to users of the river.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The

Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be



received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary safety zone for all waters of the Lower Mississippi River from mile 95.5 to mile 96.5. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Reporting and record-keeping requirements, Security measures,

Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS  
AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS  
AREAS

2. Add § 165.T08-0188 to read as follows:

§ 165.T08-0188 Safety Zone, Mississippi River Mile 95.5 -  
Mile 96.5; New Orleans, LA.

(a) Effective date/enforcement period. This section is effective from 9:45 p.m to 10:25 p.m on June 26, 2013. The safety zone described in paragraph (b) of this section will only be enforced during the effective period (during the time immediately preceding, during, and immediately following the fireworks display). The Coast Guard will announce these specific enforcement periods via Broadcast Notice to Mariners. Additionally, mariners and other members of the public may contact the Coast Guard at (504)

365-2200 to inquire about the status of the safety zone.

(b) Location. The following areas are safety zones:  
All waters of the Lower Mississippi River from mile 95.5 to  
mile 96.5, New Orleans, LA.

(c) Regulations. (1) In accordance with the general  
regulations in § 165.23 of this part, entry into this zone  
is prohibited unless specifically authorized by the Captain  
of the Port New Orleans or designated personnel.

Designated personnel include commissioned, warrant and  
petty officers of the U.S. Coast Guard assigned to units  
under the operational control of USCG Sector New Orleans.

(2) Persons or vessels requiring deviations from this  
rule must request permission from the Captain of the Port  
New Orleans. The Captain of the Port New Orleans may be  
contacted at telephone (504) 365-2200.

(3) All persons and vessels permitted to enter the  
safety zone shall comply with the instructions of the  
Captain of the Port New Orleans and designated personnel.

Dated: May 21, 2013

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P.W. Gautier

Captain, U.S. Coast Guard

Captain of the Port New Orleans

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Publication Date: 06/19/2013]